

9-69.000 PROTECTION OF GOVERNMENT PROCESSES

9-69.010 Introduction

9-69.100 Protection of Government Processes -- Obstruction of Justice

9-69.200 Perjury and False Declarations Before Grand Jury or Court -- Prosecution Policy

9-69.300 Prison Offenses (18 U.S.C. §§ 1791-1793)

9-69.400 Fugitive Felon Act (18 U.S.C. § 1073)

9-69.420 Prerequisites to Issuance of Federal Complaint in Aid of States

9-69.421 Parental Kidnapping

9-69.422 Unlawful Flight Warrants for Juvenile Offenders

9-69.430 Unlawful Flight to Avoid Custody or Confinement After Conviction

9-69.440 Unlawful Flight to Avoid Giving Testimony

9-69.460 Federal Information; Indictment; Removal -- Approval Required

9-69.500 Escape from Custody Resulting from Conviction (18 U.S.C. §§ 751 and 752)

9-69.502 Prosecution Policy (18 U.S.C. §§ 751 and 752)

9-69.600 Escape from Custody Resulting from Civil Commitment (28 U.S.C. § 1826(c))

9-69.010

Introduction

This chapter focuses on the investigation and prosecution of federal criminal offenses that interfere with the federal justice system. These offenses include obstruction of justice, perjury, escape, and unlawful flight to avoid prosecution.

For a more detailed discussion of the law that has developed on each of these offenses, see the following sections of the Criminal Resource Manual

| | |
|---|----------------------------------|
| Overview | Criminal Resource Manual at 1720 |
| Venue | Criminal Resource Manual at 1721 |
| Offenses Related to Obstruction of Justice Offenses | Criminal Resource Manual at 1722 |
| Other Research Aids | Criminal Resource Manual at 1723 |

9-69.100 Protection of Government Processes -- Obstruction of Justice

The obstruction of justice statutes include 18 U.S.C. §§ 1503, 1505, 1510, 1512-1514, and 1518. Violations of 18 U.S.C. § 1501 and 18 U.S.C. §§ 1512 and 1513, when violence (including a threat thereof) is directed at a person or property, are within the supervisory authority of the Terrorism and Violent Crime Section. Section 1511 of Title 18, United States Code, is supervised by the Organized Crime and Racketeering Section. The Fraud Section has supervisory authority over all other obstruction of justice offenses.

See the following sections of the Criminal Resource Manual for a more detailed discussion of the law on each of these statutes

| | |
|---|----------------------------------|
| Obstruction of Justice -- Scope of 18 U.S.C. § 1503 | Criminal Resource Manual at 1721 |
| Pending Proceeding Requirement -- 18 U.S.C. § 1503 | Criminal Resource Manual at 1722 |
| State of Mind Requirement -- 18 U.S.C. § 1503 | Criminal Resource Manual at 1723 |
| Omnibus Clause -- 18 U.S.C. § 1503 | Criminal Resource Manual at 1724 |
| Obstruction of Pending Proceeding -- 18 U.S.C. § 1505 | Criminal Resource Manual at 1725 |
| Scope of 18 U.S.C. § 1505 | Criminal Resource Manual at 1726 |
| Obstruction of Federal Criminal Investigation -- 18 U.S.C. § 1510 | Criminal Resource Manual at 1728 |
| Tampering with Victims, Witnesses, or Informants -- 18 U.S.C. § 1512 | Criminal Resource Manual at 1729 |
| "Official Proceeding" Requirement -- 18 U.S.C. § 1512 | Criminal Resource Manual at 1730 |
| State of Mind -- 18 U.S.C. § 1512 | Criminal Resource Manual at 1731 |
| Constitutionality -- 18 U.S.C. § 1512(d) | Criminal Resource Manual at 1732 |
| Scope of 18 U.S.C. § 1513 | Criminal Resource Manual at 1733 |
| State of Mind -- 18 U.S.C. § 1513 | Criminal Resource Manual at 1734 |
| Obstruction of Health Care Investigations -- 18 U.S.C. § 1518 | Criminal Resource Manual at 1735 |
| Inchoate Obstruction of Justice Offenses | Criminal Resource Manual at 1736 |
| Civil Action to Enjoin the Obstruction of Justice -- 18 U.S.C. § 1514 | Criminal Resource Manual at 1737 |
| Venue | Criminal Resource Manual at 1738 |
| Offenses Related to Obstruction of Justice Offenses | Criminal Resource Manual at 1739 |
| Other Research Aids | Criminal Resource Manual at 1740 |

9-69.200 Perjury and False Declarations Before Grand Jury or Court -- Prosecution Policy

Several Federal statutes criminalize perjury and related false statements. The two most commonly used statutes for perjury offenses are 18 U.S.C. §§ 1621 and 1623. The prior authorization of the Criminal Division is required for investigations or prosecutions of perjury before Congress and contempt of Congress. *See also* USAM 9-90.550. Additionally, United States Attorneys are required to consult with the Criminal Division before instituting grand jury proceedings, filing an information, or seeking an indictment of an individual for perjury committed during a trial that resulted in acquittal. In all other perjury cases, no prior authorization or consultation is required.

Generally, perjury offenses fall under the supervisory responsibility of the Division and Section of the Department having responsibility for the basic subject matter. If such responsibility cannot be identified, or if the Division/Section with jurisdiction over the basic subject matter does not have criminal prosecutive responsibilities, i.e., certain civil litigation sections, supervisory responsibility rests with the Fraud Section of the Criminal Division. For information on investigative responsibility, see the Criminal Resource Manual at 1742.

For an overview of the law on perjury and false declarations, including §§ 1621 and 1623, and sample indictments, see the following sections of the Criminal Resource Manual

| | |
|---|----------------------------------|
| Perjury and False Declarations Before Grand Jury or Court | Criminal Resource Manual at 1741 |
| Perjury -- Overview of 18 U.S.C. §§ 1621 and 1623 Violations | Criminal Resource Manual at 1743 |
| Elements of Perjury | Criminal Resource Manual at 1744 |
| Elements of Perjury -- Federal Proceeding Under Oath | Criminal Resource Manual at 1745 |
| Elements of Perjury -- Making of a False Statement | Criminal Resource Manual at 1746 |
| Elements of Perjury -- Specific Intent | Criminal Resource Manual at 1747 |
| Elements of Perjury -- Materiality | Criminal Resource Manual at 1748 |
| Comparison of Perjury Statutes -- 18 U.S.C. § 1621 and 1623 | Criminal Resource Manual at 1749 |
| Comparison of Perjury Statutes -- 18 U.S.C. § 1621 and 1623 | Criminal Resource Manual at 1750 |
| Comparison of Perjury Statutes -- 18 U.S.C. § 1621 and 1623 | Criminal Resource Manual at 1751 |
| Subornation of Perjury | Criminal Resource Manual at 1752 |
| Special Problems and Defenses -- Evasive and Unresponsive Answers | Criminal Resource Manual at 1753 |
| Special Problems and Defenses -- Venue | Criminal Resource Manual at 1754 |
| Special Problems and Defenses -- Charging Considerations | Criminal Resource Manual at 1755 |
| Special Problems and Defenses -- Perjury Trap | Criminal Resource Manual at 1756 |
| Special Problems and Defenses -- Collateral Estoppel | Criminal Resource Manual at 1757 |
| Special Problems and Defenses -- Immunity | Criminal Resource Manual at 1758 |
| 28 U.S.C. § 1746 Declarations | Criminal Resource Manual at 1759 |
| 28 U.S.C. § 1746 -- Unsworn Declarations under Penalty of Perjury | Criminal Resource Manual at 1760 |
| Sentencing Issues | Criminal Resource Manual at 1761 |
| Sample Indictment -- 18 U.S.C. § 1621 (first paragraph) | Criminal Resource Manual at 1762 |
| Sample Indictment -- 18 U.S.C. § 1621 (second paragraph) | Criminal Resource Manual at 1763 |
| Sample Indictment -- 18 U.S.C. § 1622 | Criminal Resource Manual at 1764 |
| Sample Indictment -- 18 U.S.C. § 1623 | Criminal Resource Manual at 1765 |
| Sample Indictment -- 18 U.S.C. § 1623 | Criminal Resource Manual at 1766 |
| Sample Indictment -- 18 U.S.C. § 1623 | Criminal Resource Manual at 1767 |

9-69.300 Prison Offenses (18 U.S.C. §§ 1791-1793)

The Office of Enforcement Operations has supervisory responsibility for these statutes.

An overview of federal prison offenses, including possession of contraband, providing contraband to another, trespassing, and rioting, is contained in the Criminal Resource Manual

| | |
|------------------------------------|----------------------------------|
| Introduction | Criminal Resource Manual at 1768 |
| Elements -- 18 U.S.C. § 1791(a)(1) | Criminal Resource Manual at 1769 |

| | |
|--|----------------------------------|
| Elements -- 18 U.S.C. § 1791(a)(1) -- "Prison" | Criminal Resource Manual at 1770 |
| Elements -- 18 U.S.C. § 1791(a)(1) -- "Contraband" | Criminal Resource Manual at 1771 |
| Elements -- 18 U.S.C. § 1791(a)(2) -- "Prison" | Criminal Resource Manual at 1772 |
| Elements -- 18 U.S.C. § 1791(a)(2) -- "Possess or Provide" | Criminal Resource Manual at 1773 |
| Elements -- 18 U.S.C. § 1791(a)(2) -- "Contraband" | Criminal Resource Manual at 1774 |
| Elements -- 18 U.S.C. § 1792 -- "Participation" | Criminal Resource Manual at 1775 |
| Elements -- 18 U.S.C. § 1792 -- "Mutiny or Riot" | Criminal Resource Manual at 1776 |
| Elements -- 18 U.S.C. § 1792 -- "Federal penal, detention, or correctional facility" | Criminal Resource Manual at 1777 |
| Double Jeopardy | Criminal Resource Manual at 1778 |
| Knowledge of Warden | Criminal Resource Manual at 1779 |

9-69.400 Fugitive Felon Act -- 18 U.S.C. § 1073

Though drawn as a penal statute, and therefore permitting prosecution by the Federal government for its violation, the primary purpose of the Fugitive Felon Act is to permit the Federal government to assist in the location and apprehension of fugitives from state justice. No prior Criminal Division approval is required to authorize unlawful flight complaints in aid of the states. However, the statute expressly requires "formal approval in writing" by a designated Department official before a UFAP violation can be actually prosecuted in federal court. *See* USAM 9-69.460. For information regarding use of a grand jury to locate a fugitive, *see* USAM 9-11.120.

Since the primary purpose of the Act is to assist the states in apprehending fugitives from state justice, the Act should not be applied to the interstate or international flight of federal fugitives.

For further information on the Fugitive Felon Act, *see* the Criminal Resource Manual at 1780. *See also* Criminal Resource Manual at 1786 (Unlawful Flight to Avoid Service of Process).

9-69.420 Prerequisites to Issuance of Federal Complaint in Aid of States

A complaint for violation of the Fugitive Felon Act should not be authorized unless there is probable cause to believe that the fugitive moved in interstate or foreign commerce with the intent of avoiding a felony prosecution under the laws of the place from which he fled. In addition, it should be clear that the requesting state authorities are determined to take all necessary steps to extradite or otherwise secure the return of the fugitive, and that it is their intention to bring him to trial on the state charge for which he is sought.

In considering requests for issuing complaints under the Act, care should be exercised to prevent use of the Act to assist in enforcement of any state statute with a clearly discriminatory purpose or in the discriminatory application of an otherwise lawful statute. Similarly, caution should be exercised to prevent use of FBI investigative resources to compel discharge of civil obligations. Thus, requests for federal involvement in worthless check violations, or in desertion/non-support cases should be scrutinized carefully.

9-69.421 Parental Kidnapping

State requests for the filing of unlawful flight complaints in felony parental abduction cases are to be treated in the same manner as other unlawful flight requests. *See* USAM 9-69.420 for additional policy guidance on

unlawful flight complaints. See USAM 9-74.260 and the Criminal Resource Manual at 1781 for additional information regarding international parental kidnapping.

9-69.422 Unlawful Flight Warrants for Juvenile Offenders

A state juvenile delinquency charge does not provide a basis for obtaining an unlawful flight warrant because a juvenile proceeding involves an adjudication of status, not a felony prosecution. However, if a juvenile is charged, as an adult, with a state felony offense, a UFAP warrant may be sought. In such situations, the UFAP complaint must charge an act of juvenile delinquency (unlawful flight) under 18 U.S.C. § 5032. See the Criminal Resource Manual at 1782 for more information on this topic.

9-69.430 Unlawful Flight to Avoid Custody or Confinement After Conviction

Selective handling by United States Attorneys will obviate indiscriminate use of the Fugitive Felon Act to locate parolees who have simply failed to report to the parole board or failed to notify the parole board of a change of address. See the Criminal Resource Manual at 1784 for more information on this topic.

9-69.440 Unlawful Flight to Avoid Giving Testimony

The majority of states have adopted the Uniform Act to Secure the Return of Witnesses From Without the State in Criminal Cases. Therefore, a state should be required to exhaust existing remedies for securing the return of witnesses before seeking Federal assistance. See the Criminal Resource Manual at 1785 for more information on this topic.

9-69.460 Federal Information; Indictment; Removal -- Approval Required

The Fugitive Felon Act (18 U.S.C. § 1073) requires formal approval in writing by the Attorney General, Deputy Attorney General, Associate Attorney General, or Assistant Attorney General before initiating a prosecution for unlawful flight to avoid prosecution, or custody or confinement after conviction, or to avoid giving testimony. Accordingly, under no circumstances should an indictment under the Act be sought nor an information be filed nor should removal proceedings under Rule 40, Federal Rules of Criminal Procedure, be instituted without the written approval of the Assistant Attorney General, Criminal Division. Requests for written approval to prosecute for unlawful flight should be forwarded to the Terrorism and Violent Crime Section. Generally, such requests are approved only if it clearly appears that the interests of justice would be frustrated by a failure to prosecute. See the Criminal Resource Manual at 1813 for more information on this topic.

9-69.500 Escape from Custody Resulting from Conviction (18 U.S.C. §§ 751 and 752)

An overview of the laws relating to escape from custody resulting from conviction can be found in the below-listed sections of the Criminal Resource Manual. The Office of Enforcement Operations has supervisory responsibility for these statutes. The U.S. Marshals Service shall have investigative jurisdiction over the federal escape statutes.

In the event that a federal escapee becomes a subject of an ongoing FBI substantive investigation, the FBI will seek the fugitive's apprehension in coordination with the U.S. Marshals Service

Escape From Custody Resulting from Conviction

Criminal Resource Manual at 1801

(18 U.S.C. §§ 751 and 752) -- Introduction

"Escape from Custody" Define

Criminal Resource Manual at 1802

Elements of the Offense of Escape from Custody -- Generally

Criminal Resource Manual at 1803

Elements of the Offense of Escape from Custody -- Intent

Criminal Resource Manual at 1804

Elements of the Offense of Escape from Custody -- Attempt

Criminal Resource Manual at 1805

Aiding and Assisting

Criminal Resource Manual at 1806

Conspiracy

Criminal Resource Manual at 1807

Constructive Custody

Criminal Resource Manual at 1808

Institution or Facility in Which Confined -- Generally

Criminal Resource Manual at 1809

Legal Custody by Attorney General

Criminal Resource Manual at 1810

Expedition Authorization of Magistrates' Complaints and
Warrants in Federal Escape Cases -- Case Authority

Criminal Resource Manual at 1811

Venue in Furlough and "Walkaway" Cases

Criminal Resource Manual at 1812

Prosecution of Escapes by Federal Prisoners Who Have Been
Surrendered to the Temporary Custody of State Authorities
Pursuant to State Court Writs of Habeas Corpus
Ad Testificandum and Ad Prosequendum

Criminal Resource Manual at 1813

Defenses -- Generally

Criminal Resource Manual at 1814

Defenses -- Double Jeopardy

Criminal Resource Manual at 1815

Defenses -- Duress

Criminal Resource Manual at 1816

Defenses -- Intoxication

Criminal Resource Manual at 1817

Defenses -- Insanity

Criminal Resource Manual at 1818

Defenses -- Lack of Mental Capacity

Criminal Resource Manual at 1819

9-69.502 Escape from Custody Resulting from Conviction (18 U.S.C. §§ 751 and 752) -- Prosecution Policy

As a result of decisions handed down by the United States Supreme Court, it is clear that warrants are required to enter premises to arrest escapees from federal custody under 18 U.S.C. § 751 in all cases except where consent or exigent circumstances exist. It is clear from these decisions that in some cases an arrest warrant coupled with a reasonable belief that the escapee is in the premises is sufficient for a lawful entry. As a result of these decisions, discussed more fully in the Criminal Resource Manual at 1811, and in order to provide federal law enforcement officers with all available legal process for the accomplishment of arrests of federal escapees, prosecutors are instructed that in all federal escape cases the issuance of a magistrate's complaint and arrest warrant should be authorized promptly upon completion of the investigation and presentation of the matter to the United States Attorney's Office by the agency involved. Many local law enforcement agencies will not assist in the search for federal escapees if there is no arrest warrant for the escapee. Thus, by promptly issuing the arrest warrant, prosecutors will insure the full cooperation of local law enforcement agencies in the search for and apprehension of the escapee.

Authorization of a complaint and arrest warrant should not be deferred until after apprehension of the escapee. Reevaluation of the prosecutive merit of the individual escape case in which a complaint is authorized may be made after the escapee has been apprehended. At that later time, prosecutors may determine that the case

does not merit proceeding further and dismiss the complaint, or the escapee may be indicted within thirty or sixty days, 18 U.S.C. § 3161(b), depending on the availability of a grand jury, and proceed with the prosecution. However, by prompt authorization of the issuance of a magistrate's complaint and warrant, prosecutors will make available to the enforcement agencies legal process which will be sufficient to permit entry into private premises.

9-69.600 Escape from Custody Resulting from Civil Commitment (28 U.S.C. § 1826(c))

An overview of the law relating to escape from custody resulting from civil commitment can be found in the below-listed sections of the Criminal Resource Manual. The Office of Enforcement Operations has supervisory responsibility for this statute. The U.S. Marshals Service has investigative jurisdiction over the federal escape statutes. In the event a federal escape becomes the subject of an on-going FBI substantive investigation, the FBI will seek the fugitive's apprehension in coordination with the U.S. Marshals Service. *See* USAM 9-69.500.

Further guidance on this topic is available from the Criminal Resource Manual

| | |
|---|----------------------------------|
| Escape from Custody Resulting from Civil Commitment (28 U.S.C. §1826(c)) -- Introduction | Criminal Resource Manual at 1820 |
| Congressional Intent | Criminal Resource Manual at 1821 |
| Elements of the Offense of Escape from Custody Resulting from Civil Commitment (28 U.S.C. § 1826(c)) | Criminal Resource Manual at 1822 |
| Elements of Offense (28 U.S.C. § 1826(c)) -- Intent | Criminal Resource Manual at 1823 |
| Elements of Offense (28 U.S.C. § 1826(c)) -- Custody | Criminal Resource Manual at 1824 |
| Elements of Offense (28 U.S.C § 1826(c)) -- Commitment | Criminal Resource Manual at 1825 |
| Defenses -- Generally | Criminal Resource Manual at 1826 |